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S. 429

To enable concrete masonry products manufacturers to establish, finance, and carry out a coordinated program of research, education, and promotion to improve, maintain, and develop markets for concrete masonry products.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 28, 2013

Mr. NELSON (for himself, Mr. BLUNT, Mr. MANCHIN, Mrs. McCASKILL, Mr. COONS, Mrs. HAGAN, Mr. BURR, Mr. CHAMBLISS, Ms. KLOBUCHAR, Mr. CRAPO, Mr. MORAN, Mr. CASEY, Ms. BALDWIN, Mr. LEVIN, Mr. CARDIN, Ms. STABENOW, Mr. ROBERTS, Mr. DURBIN, Ms. CANTWELL, Mrs. MURRAY, Mr. WARNER, Mr. BOOKER, and Mr. MENENDEZ) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

DECEMBER 8, 2014

Reported by Mr. ROCKEFELLER, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To enable concrete masonry products manufacturers to establish, finance, and carry out a coordinated program of research, education, and promotion to improve, maintain, and develop markets for concrete masonry products.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Concrete Masonry
3 Products Research, Education, and Promotion Act of
4 2013”.

5 **SEC. 2. FINDINGS AND DECLARATION OF POLICY.**

6 (a) **FINDINGS.**—Congress finds the following:

7 (1) The production of concrete masonry prod-
8 ucts plays a significant role in the economy of the
9 United States.

10 (2) Concrete masonry products are produced by
11 hundreds of concrete manufacturers and utilized
12 throughout the United States and foreign countries.

13 (3) Concrete masonry products move in the
14 channels of interstate and foreign commerce, and
15 concrete masonry products that do not move in such
16 channels of commerce directly burden or affect inter-
17 state commerce of concrete masonry products.

18 (4) The concrete masonry products industry
19 employs thousands of workers and positively impacts
20 economic stability throughout the United States.

21 (5) The maintenance and expansion of existing
22 markets for concrete masonry products and the de-
23 velopment of new markets is vital to the welfare of
24 concrete manufacturers in the United States and
25 those concerned with marketing and using concrete

1 masonry products as well as the general economic
2 welfare of the United States.

3 (6) The concrete masonry products industry
4 plays a vital role in providing safe, environmentally
5 sustainable, and economical construction for citizens
6 of the United States and abroad.

7 (7) Concrete masonry products are used for the
8 construction of structures that protect and provide
9 shelter for citizens during disasters (earthquakes,
10 floods, hurricanes, tornados, fire, et cetera).

11 (8) Concrete masonry structures provide energy
12 efficiencies to reduce American energy demands.

13 (9) Concrete masonry provides for durable
14 structures that support sustainability objectives, re-
15 ducing long-term demands on natural resources.

16 (10) Concrete masonry products are made
17 using locally available resources throughout the
18 United States, reducing transportation and infra-
19 structure demands.

20 (11) Concrete masonry products are used to
21 support the construction of durable and cost-effi-
22 cient, low-income housing.

23 (b) PURPOSE.—The purpose of this Act is to author-
24 ize the establishment of an orderly program for devel-
25 oping, financing, and carrying out an effective, contin-

uous, and coordinated program of research, education, and
 promotion, including funds for marketing and market re-
 search activities, that is designed to—

(1) strengthen the position of the concrete ma-
 sonry products industry in the domestic market-
 place;

(2) maintain, develop, and expand markets and
 uses for concrete masonry products in the domestic
 and foreign marketplaces; and

(3) promote the use of concrete masonry prod-
 ucts in environmentally sustainable construction and
 building.

(c) **LIMITATION.**—Nothing in this Act may be con-
 strued to provide for the control of production or otherwise
 limit the right of any person to manufacture concrete ma-
 sonry products.

SEC. 3. DEFINITIONS.

For the purposes of this Act:

(a) **BLOCK MACHINE.**—The term “block machine”
 means a piece of equipment that utilizes vibration and
 compaction to form concrete masonry products.

(b) **BOARD.**—The term “Board” means the Concrete
 Masonry Products Board established under section 5.

(c) **CAVITY.**—The term “cavity” means the open
 space in the mold of a block machine capable of forming

1 a single concrete masonry unit having nominal plan di-
 2 mensions of 8 inches by 16 inches.

3 (d) COMMERCE.—The term “commerce” includes
 4 interstate, foreign, and intrastate commerce.

5 (e) CONCRETE MASONRY PRODUCTS.—The term
 6 “concrete masonry products” refers to a broader class of
 7 products, including concrete masonry units as well as
 8 hardscape products such as concrete pavers and segmental
 9 retaining wall units, manufactured on a block machine
 10 using dry-cast concrete.

11 (f) CONCRETE MASONRY UNIT.—The term “concrete
 12 masonry unit” means a concrete masonry product that is
 13 a manmade masonry unit having an actual width of 3
 14 inches or greater and manufactured from dry-cast con-
 15 crete using a block machine. Such term includes concrete
 16 block and related concrete units used in masonry applica-
 17 tions.

18 (g) DEPARTMENT.—The term “Department” means
 19 the Department of Commerce.

20 (h) DRY-CAST CONCRETE.—The term “dry-cast con-
 21 crete” means a composite material that is composed essen-
 22 tially of aggregates embedded in a binding medium com-
 23 posed of a mixture of cementitious materials (including
 24 hydraulic cement, pozzolans, or other cementitious mate-

1 rials) and water of such a consistency to maintain its
 2 shape after forming in a block machine.

3 (i) EDUCATION.—The term “education” means pro-
 4 grams that will educate or communicate the benefits of
 5 concrete masonry products in safe and environmentally
 6 sustainable development, advancements in concrete ma-
 7 sonry product technology and development, and other in-
 8 formation and programs designed to generate increased
 9 demand for commercial, residential, multi-family, and in-
 10 stitutional projects using concrete masonry products and
 11 to generally enhance the image of concrete masonry prod-
 12 ucts.

13 (j) MACHINE CAVITIES.—The term “machine cav-
 14 ities” means the cavities with which a block machine could
 15 be equipped.

16 (k) MACHINE CAVITIES IN OPERATION.—The term
 17 “machine cavities in operation” means those machine cav-
 18 ities associated with a block machine that have produced
 19 concrete masonry units within the last 6 months of the
 20 date set for determining eligibility and is fully operable
 21 and capable of producing concrete masonry units.

22 (l) MASONRY UNIT.—The term “masonry unit”
 23 means a noncombustible building product intended to be
 24 laid by hand or joined using mortar, grout, surface bond-

1 ing, post-tensioning or some combination of these meth-
 2 ods.

3 (m) MANUFACTURER.—The term “manufacturer”
 4 means any person engaged in the manufacturing of com-
 5 mercial concrete masonry products.

6 (n) ORDER.—The term “order” means an order
 7 issued under section 4.

8 (o) PERSON.—The term “person” means any indi-
 9 vidual, group of individuals, partnership, corporation, as-
 10 sociation, cooperative, or any other entity.

11 (p) PROMOTION.—The term “promotion” means any
 12 action, including paid advertising, to advance the image
 13 and desirability of concrete masonry products with the ex-
 14 press intent of improving the competitive position and
 15 stimulating sales of concrete masonry products in the mar-
 16 ketplace.

17 (q) RESEARCH.—The term “research” means studies
 18 testing the effectiveness of market development and pro-
 19 motion efforts; studies relating to the improvement of con-
 20 crete masonry products and new product development, and
 21 studies documenting the performance of concrete ma-
 22 sonry.

23 (r) SECRETARY.—The term “Secretary” means the
 24 Secretary of Commerce.

1 ~~(s) UNITED STATES.—The term “United States”~~
 2 means the several States and the District of Columbia.

3 **SEC. 4. ISSUANCE OF ORDERS.**

4 ~~(a) IN GENERAL.—~~

5 ~~(1) ISSUANCE.—The Secretary, subject to the~~
 6 ~~procedures provided in subsection (b), shall issue or-~~
 7 ~~ders under this Act applicable to manufacturers of~~
 8 ~~concrete masonry products.~~

9 ~~(2) SCOPE.—Any order shall be national in~~
 10 ~~scope.~~

11 ~~(3) ONE ORDER.—Not more than one order~~
 12 ~~shall be in effect at any one time.~~

13 ~~(b) PROCEDURES.—~~

14 ~~(1) DEVELOPMENT OR RECEIPT OF PROPOSED~~
 15 ~~ORDER.—A proposed order with respect to concrete~~
 16 ~~masonry products may be—~~

17 ~~(A) prepared by the Secretary at any time;~~

18 ~~or~~

19 ~~(B) requested by or submitted to the Sec-~~
 20 ~~retary by—~~

21 ~~(i) an existing national organization of~~
 22 ~~concrete masonry product manufacturers;~~

23 ~~or~~

1 (ii) any person that may be affected
 2 by the issuance of an order with respect to
 3 concrete masonry products.

4 ~~(2) PUBLICATION OF PROPOSED ORDER.—~~Not
 5 later than 60 days after receiving a proposed order
 6 or a request for a proposed order in accordance with
 7 subparagraph ~~(B)~~ of paragraph (1), the Secretary
 8 shall publish a proposed order in the Federal Reg-
 9 ister and give 30 days notice and opportunity for
 10 public comment on the proposed order.

11 ~~(3) ISSUANCE OF ORDER.—~~

12 ~~(A) IN GENERAL.—~~After notice and oppor-
 13 tunity for public comment are provided in ac-
 14 cordance with paragraph ~~(2)~~, the Secretary
 15 shall issue the order, taking into consideration
 16 the comments received and including in the
 17 order such provisions as are necessary to ensure
 18 that the order is in conformity with this Act.

19 ~~(B) EFFECTIVE DATE.—~~The order shall be
 20 issued and become effective only after an af-
 21 firmative vote in a referendum as provided in
 22 section 7, but not later than 120 days after
 23 publication of the proposed order.

24 ~~(c) AMENDMENTS.—~~The Secretary may, from time to
 25 time, amend an order. The provisions of this Act applica-

1 ble to an order shall be applicable to any amendment to
 2 an order.

3 **SEC. 5. REQUIRED TERMS IN ORDERS.**

4 (a) ~~IN GENERAL.~~—Any order issued under this Act
 5 shall contain the terms and provisions specified in this sec-
 6 tion.

7 (b) ~~CONCRETE MASONRY PRODUCTS BOARD.~~—

8 (1) ~~ESTABLISHMENT AND MEMBERSHIP.~~—

9 (A) ~~ESTABLISHMENT.~~—The order shall
 10 provide for the establishment of a Concrete Ma-
 11 sonry Products Board to carry out a program
 12 of generic promotion, research, and information
 13 regarding concrete masonry products.

14 (B) ~~MEMBERSHIP.~~—

15 (i) ~~NUMBER OF MEMBERS.~~—The
 16 board shall consist of not more than 25
 17 members.

18 (ii) ~~APPOINTMENT.~~—The members of
 19 the Board shall be appointed by the Sec-
 20 retary from nominations submitted as pro-
 21 vided in this subsection.

22 (iii) ~~COMPOSITION.~~—The Board shall
 23 consist of manufacturers.

24 (2) ~~DISTRIBUTION OF APPOINTMENTS.~~—

1 (A) ~~GEOGRAPHICAL REPRESENTATION.—~~

2 To ensure fair and equitable representation of
3 the concrete masonry products industry, the
4 composition of the Board shall reflect the geo-
5 graphical distribution of the manufacture of
6 concrete masonry products in the United States
7 and the types of concrete masonry products
8 manufactured.

9 (B) ~~ADJUSTMENT IN BOARD REPRESENTA-~~

10 ~~TION.—~~Three years after the assessment of
11 concrete masonry products commences pursuant
12 to an order, and at the end of each 3-year pe-
13 riod thereafter, the Board, subject to the review
14 and approval of the Secretary, shall, if war-
15 ranted, recommend to the Secretary the re-
16 apportionment of the Board membership to re-
17 flect changes in the geographical distribution of
18 the manufacture of concrete masonry products
19 and the types of concrete masonry products
20 manufactured.

21 (3) ~~NOMINATIONS PROCESS.—~~The order shall

22 provide the following:

23 (A) ~~NUMBER OF NOMINATIONS.—~~Two

24 nominees shall be submitted for each appoint-
25 ment to the Board.

1 (B) PROCEDURE.—Nominations for each
 2 appointment of a manufacturer shall be made
 3 by manufacturers in accordance with proce-
 4 dures specified in the order.

5 (C) FAILURE TO NOMINATE.—In any case
 6 in which manufacturers fail to nominate indi-
 7 viduals for an appointment to the Board, the
 8 Secretary may appoint an individual to fill the
 9 vacancy on a basis provided in the order or
 10 other regulations of the Secretary.

11 (D) FAILURE TO APPOINT.—If the Sec-
 12 retary fails to make an appointment to the
 13 Board within 30 days of receiving nominations
 14 for such appointment, the first nominee for
 15 such appointment shall be deemed appointed.

16 (4) ALTERNATES.—The order shall provide for
 17 the selection of alternate members of the Board by
 18 the Secretary in accordance with procedures speci-
 19 fied in the order.

20 (5) TERMS.—

21 (A) IN GENERAL.—The members and any
 22 alternates of the Board shall each serve for a
 23 term of 3 years, except that members and any
 24 alternates initially appointed to the Board shall

1 serve for terms of not more than 2, 3, and 4
 2 years, as specified by the order.

3 (B) LIMITATION ON CONSECUTIVE
 4 TERMS.—A member or alternate may serve not
 5 more than 2 consecutive terms.

6 (C) CONTINUATION OF TERM.—Notwith-
 7 standing subparagraph (B), each member or al-
 8 ternate shall continue to serve until a successor
 9 is appointed by the Secretary.

10 (D) VACANCIES.—A vacancy arising before
 11 the expiration of a term of office of an incum-
 12 bent member or alternate of the Board shall be
 13 filled in a manner provided for in the order.

14 (6) DISQUALIFICATION FROM BOARD SERV-
 15 ICE.—The order shall provide that if a member or
 16 alternate of the Board who was appointed as a man-
 17 ufacturer ceases to qualify as a manufacturer, such
 18 member or alternate shall be disqualified from serv-
 19 ing on the Board.

20 (7) COMPENSATION.—

21 (A) IN GENERAL.—Members and any al-
 22 ternates of the Board shall serve without com-
 23 pensation.

24 (B) TRAVEL EXPENSES.—If approved by
 25 the Board, members or alternates shall be reim-

1 bursed for reasonable travel expenses, which
 2 may include per diem allowance or actual sub-
 3 sistence incurred while away from their homes
 4 or regular places of business in the performance
 5 of services for the Board.

6 ~~(c) POWERS AND DUTIES OF THE BOARD.—~~The
 7 order shall specify the powers and duties of the Board,
 8 which shall include the power and duty—

9 ~~(1)~~ to administer the order in accordance with
 10 its terms and conditions and to collect assessments;

11 ~~(2)~~ to develop and recommend to the Secretary
 12 for approval such bylaws as may be necessary for
 13 the functioning of the board and such rules as may
 14 be necessary to administer the order, including ac-
 15 tivities authorized to be carried out under the order;

16 ~~(3)~~ to meet, organize, and select from among
 17 members of the Board a chairperson, other officers,
 18 and committees and subcommittees, as the Board
 19 determines appropriate;

20 ~~(4)~~ to establish regional organizations or com-
 21 mittees to administer regional initiatives;

22 ~~(5)~~ to establish working committees of persons
 23 other than Board members;

24 ~~(6)~~ to employ such persons, other than the
 25 members, as the board considers necessary, and to

1 determine the compensation and specify the duties
2 of the persons;

3 ~~(7)~~ to prepare and submit for the approval of
4 the Secretary, before the beginning of each fiscal
5 year, rates of assessment under section 6 and an an-
6 nual budget of the anticipated expenses to be in-
7 curred in the administration of the order, including
8 the probable cost of each promotion, research, and
9 information activity proposed to be developed or ear-
10 ried out by the Board;

11 ~~(8)~~ to borrow funds necessary for the startup
12 expenses of the order;

13 ~~(9)~~ to carry out research, education, and pro-
14 motion programs and projects, and to pay the costs
15 of such programs and projects with assessments col-
16 lected under section 6;

17 ~~(10)~~ subject to subsection (c), to enter into con-
18 tracts or agreements to develop and carry out pro-
19 grams or projects of research, education, and pro-
20 motion relating to concrete masonry products;

21 ~~(11)~~ to keep minutes, books, and records that
22 reflect the actions and transactions of the Board,
23 and promptly report minutes of each Board meeting
24 to the Secretary;

1 ~~(12)~~ to receive, investigate, and report to the
 2 Secretary complaints of violations of the order;

3 ~~(13)~~ to furnish the Secretary with such infor-
 4 mation as the Secretary may request;

5 ~~(14)~~ to recommend to the Secretary such
 6 amendments to the order as the Board considers ap-
 7 propriate; and

8 ~~(15)~~ to provide the Secretary with advance no-
 9 tice of meetings.

10 ~~(d) PROGRAMS AND PROJECTS; BUDGETS; EX-~~
 11 ~~PENSES.—~~

12 ~~(1) PROGRAMS AND PROJECTS.—~~The order
 13 shall require the Board to submit to the Secretary
 14 for approval any program or project of research,
 15 education, or promotion.

16 ~~(2) BUDGETS.—~~

17 ~~(A) SUBMISSION.—~~The order shall require
 18 the Board to submit to the Secretary for ap-
 19 proval a budget of the anticipated expenses and
 20 disbursements of the Board in the implementa-
 21 tion of the order, including the projected costs
 22 of concrete masonry products research, edu-
 23 cation, and promotion programs and projects.

24 ~~(B) TIMING.—~~The budget shall be sub-
 25 mitted before the beginning of a fiscal year and

as frequently as may be necessary after the beginning of the fiscal year.

(C) APPROVAL.—If the Secretary fails to approve or reject a budget within 30 days of receipt, such budget shall be deemed approved.

(3) ADMINISTRATIVE EXPENSES.—

(A) INCURRING EXPENSES.—A board may incur the expenses described in paragraph (2) and other expenses for the administration, maintenance, and functioning of the Board as authorized by the Secretary.

(B) PAYMENT OF EXPENSES.—Expenses incurred under subparagraph (A) shall be paid by the Board using assessments collected under section 6, earnings obtained from assessments, and other income of the Board. Any funds borrowed by the Board shall be expended only for startup costs and capital outlays.

(C) LIMITATION ON SPENDING.—For fiscal years beginning 3 or more years after the date of the establishment of the Board, the Board may not expend for administration (except for reimbursement to the Secretary required under subparagraph (D)), maintenance, and functioning of the Board in a fiscal year an amount

1 that exceeds 10 percent of the assessment and
 2 other income received by the Board for the fis-
 3 cal year.

4 ~~(D) REIMBURSEMENT OF SECRETARY.—~~

5 The order shall require that the Secretary be
 6 reimbursed from assessments for all expenses
 7 incurred by the Secretary in the implementa-
 8 tion, administration, and supervision of the
 9 order, including all referenda costs incurred in
 10 connection with the order.

11 ~~(e) CONTRACTS AND AGREEMENTS.—~~

12 ~~(1) IN GENERAL.—~~The order shall provide that,
 13 with the approval of the Secretary, the Board may—

14 ~~(A) enter into contracts and agreements to~~
 15 ~~carry programs and projects of research, edu-~~
 16 ~~cation, and promotion activities relating to con-~~
 17 ~~crete masonry products, including contracts and~~
 18 ~~agreements with manufacturer associations or~~
 19 ~~other entities as considered appropriate by the~~
 20 ~~Secretary;~~

21 ~~(B) enter into contracts and agreements~~
 22 ~~for administrative services; and~~

23 ~~(C) pay the cost of approved research, edu-~~
 24 ~~cation, and promotion programs and projects~~
 25 ~~using assessments collected under section 6;~~

1 earnings obtained from assessments, and other
2 income of the Board.

3 ~~(2) REQUIREMENTS.—Each contract or agree-~~
4 ~~ment shall provide that any person who enters into~~
5 ~~the contract or agreement with the Board shall—~~

6 ~~(A) develop and submit to the Board a~~
7 ~~proposed activity together with a budget that~~
8 ~~specifies the cost to be incurred to carry out the~~
9 ~~activity;~~

10 ~~(B) keep accurate records of all of trans-~~
11 ~~actions relating to the contract or agreement;~~

12 ~~(C) account for funds received and ex-~~
13 ~~pended in connection with the contract or~~
14 ~~agreement;~~

15 ~~(D) make periodic reports to the Board of~~
16 ~~activities conducted under the contract or~~
17 ~~agreement; and~~

18 ~~(E) make such other reports as the Board~~
19 ~~or the Secretary considers relevant.~~

20 ~~(3) FAILURE TO APPROVE.—If the Secretary~~
21 ~~fails to approve or reject a contract or agreement~~
22 ~~entered into under paragraph (1) within 30 days of~~
23 ~~receipt, the contract or agreement shall be deemed~~
24 ~~approved.~~

25 ~~(f) BOOKS AND RECORDS OF BOARD.—~~

1 ~~(1) IN GENERAL.~~—The order shall require the
2 Board to—

3 ~~(A)~~ maintain such books and records
4 (which shall be available to the Secretary for in-
5 spection and audit) as the Secretary may re-
6 quire;

7 ~~(B)~~ collect and submit to the Secretary, at
8 any time the Secretary may specify, any infor-
9 mation the Secretary may request; and

10 ~~(C)~~ account for the receipt and disburse-
11 ment of all funds in the possession, or under
12 the control, of the Board.

13 ~~(2) AUDITS.~~—The order shall require the Board
14 to have—

15 ~~(A)~~ the books and records of the Board au-
16 dited by an independent auditor at the end of
17 each fiscal year; and

18 ~~(B)~~ a report of the audit submitted di-
19 rectly to the Secretary.

20 ~~(g) PROHIBITED ACTIVITIES.~~—

21 ~~(1) IN GENERAL.~~—Subject to paragraph ~~(2)~~,
22 the Board shall not engage in any action to, nor
23 shall any funds received by the Board under this Act
24 be used to—

1 (A) influence legislation or governmental
2 action;

3 (B) engage in an action that would be a
4 conflict of interest; or

5 (C) engage in advertising that is false or
6 misleading.

7 (2) EXCEPTIONS.—Paragraph (1) does not pre-
8 clude—

9 (A) the development and recommendation
10 of amendments to the order;

11 (B) the communication to appropriate gov-
12 ernment officials of information relating to the
13 conduct, implementation, or results of research;
14 education, and promotion activities under the
15 order; or

16 (C) any action designed to market concrete
17 masonry products directly to a foreign govern-
18 ment or political subdivision of a foreign gov-
19 ernment.

20 (h) PERIODIC EVALUATION.—The order shall require
21 the Board to provide for the independent evaluation of all
22 research, education, and promotion activities undertaken
23 under the order.

24 (i) BOOKS AND RECORDS OF PERSONS COVERED BY
25 ORDER.—

1 ~~(1) IN GENERAL.~~—The order shall require that
2 manufacturers and importers of concrete masonry
3 products shall—

4 ~~(A)~~ maintain records sufficient to ensure
5 compliance with the order and regulations;

6 ~~(B)~~ submit to the Board any information
7 required by the Board to carry out its respon-
8 sibilities; and

9 ~~(C)~~ make the records described in subpara-
10 graph ~~(A)~~ available, during normal business
11 hours, for inspection by employees or agents of
12 the Board or the Department, including any
13 records necessary to verify information required
14 under subparagraph ~~(B)~~.

15 ~~(2) TIME REQUIREMENT.~~—Any record required
16 to be maintained under paragraph ~~(1)~~ shall be main-
17 tained for such time period as the Secretary may
18 prescribe.

19 ~~(3) CONFIDENTIALITY OF INFORMATION.~~—

20 ~~(A) IN GENERAL.~~—Except as otherwise
21 provided in this Act, all information obtained
22 under paragraph ~~(1)~~ or as part of a referendum
23 under section 7 shall be kept confidential by all
24 officers, employees, and agents of the Depart-
25 ment and of the Board.

1 ~~(B) SUITS AND HEARINGS.~~—Information
 2 referred to in subparagraph ~~(A)~~ may be dis-
 3 closed only if—

4 (i) the Secretary considers the infor-
 5 mation relevant; and

6 (ii) the information is revealed in a
 7 judicial proceeding or administrative hear-
 8 ing brought at the direction or on the re-
 9 quest of the Secretary or to which the Sec-
 10 retary or any officer of the Department is
 11 a party.

12 ~~(C) GENERAL STATEMENTS AND PUBLICA-~~
 13 ~~TIONS.~~—This paragraph does not prohibit—

14 (i) the issuance of general statements
 15 based on reports or on information relating
 16 to a number of persons subject to an order
 17 if the statements do not identify the infor-
 18 mation furnished by any person; or

19 (ii) the publication, by direction of the
 20 Secretary, of the name of any person vio-
 21 lating any order and a statement of the
 22 particular provisions of the order violated
 23 by the person.

24 ~~(D) PENALTY.~~—Any person who willfully
 25 violates this subsection shall be fined not more

1 than \$5,000, imprisoned not more than 1 year,
2 or both.

3 ~~(4) WITHHOLDING INFORMATION.—~~This sub-
4 section does not authorize the withholding of infor-
5 mation from Congress.

6 **SEC. 6. ASSESSMENTS.**

7 ~~(a) ASSESSMENTS.—~~The order shall provide that as-
8 sessments shall be paid by manufacturers with respect to
9 concrete masonry products manufactured and marketed in
10 the United States.

11 ~~(b) COLLECTION.—~~

12 ~~(1) IN GENERAL.—~~Assessments required under
13 the order shall be remitted by the manufacturer to
14 the Board in the manner prescribed by the order.

15 ~~(2) TIMING.—~~The order shall provide that as-
16 sessments required under the order shall be remitted
17 to the Board not less frequently than quarterly.

18 ~~(3) RECORDS.—~~As part of the remittance of as-
19 sessments, manufacturers shall identify the total
20 amount due in assessments on all sales receipts, in-
21 voices or other commercial documents of sale as a
22 result of the sale of concrete masonry units in a
23 manner as prescribed by the Board to ensure com-
24 pliance with the order.

1 ~~(c) ASSESSMENT RATES.~~—With respect to assess-
 2 ment rates, the order shall contain the following terms:

3 ~~(1) INITIAL RATE.~~—The assessment rate on
 4 concrete masonry products shall be \$0.01 per con-
 5 crete masonry unit sold.

6 ~~(2) CHANGES IN THE RATE.~~—

7 ~~(A) AUTHORITY TO CHANGE RATE.~~—The
 8 Board shall have the authority to change the
 9 assessment rate. A two-thirds majority of voting
 10 members of the Board shall be required to ap-
 11 prove a change in the assessment rate.

12 ~~(B) LIMITATION ON INCREASES.~~—An in-
 13 crease or decrease in the assessment rate with
 14 respect to concrete masonry products may not
 15 exceed \$0.01 per concrete masonry unit sold.

16 ~~(C) MAXIMUM RATE.~~—The assessment
 17 rate shall not be in excess of \$0.05 per concrete
 18 masonry unit.

19 ~~(D) LIMITATION ON FREQUENCY OF~~
 20 ~~CHANGES.~~—The assessment rate may not be in-
 21 creased or decreased more than once annually.

22 ~~(d) LATE-PAYMENT AND INTEREST CHARGES.~~—

23 ~~(1) IN GENERAL.~~—Late-payment and interest
 24 charges may be levied on each person subject to the

1 order who fails to remit an assessment in accordance
2 with subsection (b).

3 ~~(2) RATE.—~~The rate for late-payment and in-
4 terest charges shall be specified by the Secretary.

5 ~~(c) INVESTMENT OF ASSESSMENTS.—~~Pending dis-
6 bursement of assessments under a budget approved by the
7 Secretary, a board may invest assessments collected under
8 this section in—

9 ~~(1)~~ obligations of the United States or any
10 agency of the United States;

11 ~~(2)~~ general obligations of any State or any po-
12 litical subdivision of a State;

13 ~~(3)~~ interest-bearing accounts or certificates of
14 deposit of financial institutions that are members of
15 the Federal Reserve System; or

16 ~~(4)~~ obligations fully guaranteed as to principal
17 and interest by the United States.

18 ~~(f) ASSESSMENT FUNDS FOR REGIONAL INITIA-~~
19 ~~TIVES.—~~

20 ~~(1) IN GENERAL.—~~The order shall provide that
21 no less than 50 percent of the assessments (less ad-
22 ministration expenses) paid by a manufacturer shall
23 be used to support research, education, and pro-
24 motion plans and projects in support of the geo-
25 graphic region of the manufacturer.

(2) GEOGRAPHIC REGIONS.—The order shall provide for the following geographic regions:

(A) Region I shall comprise Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and West Virginia.

(B) Region II shall comprise Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia.

(C) Region III shall comprise Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.

(D) Region IV shall comprise Arizona, Arkansas, Kansas, Louisiana, Missouri, New Mexico, Oklahoma, and Texas.

(E) Region V shall comprise Alaska, California, Colorado, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming.

(3) ADJUSTMENT OF GEOGRAPHIC REGIONS.—The order shall provide that the Secretary may, upon recommendation of the Board, modify the com-

1 position of the geographic regions described in para-
 2 graph (2).

3 **SEC. 7. REFERENDA.**

4 (a) INITIAL REFERENDUM.—

5 (1) REFERENDUM REQUIRED.—During the 60-
 6 day period immediately preceding the proposed effec-
 7 tive date of the order issued under section 4, the
 8 Secretary shall conduct a referendum among manu-
 9 facturers required to pay assessments under the
 10 order, as provided in section 6.

11 (2) APPROVAL OF ORDER NEEDED.—The order
 12 shall become effective only if the Secretary deter-
 13 mines that the order has been approved by a simple
 14 majority of all votes cast in the referendum.

15 (b) VOTES PERMITTED.—

16 (1) IN GENERAL.—Each manufacturer eligible
 17 to vote in a referendum conducted under this section
 18 shall be entitled to cast one vote for each machine
 19 cavity in operation that is operated by such manu-
 20 facturer if they satisfy the eligibility requirements as
 21 defined in paragraph (2).

22 (2) ELIGIBILITY.—For purposes of paragraph
 23 (1), manufacturers shall be considered to be eligible
 24 to vote if they have manufactured concrete masonry

1 products during a period of at least 180 days prior
2 to the referendum.

3 ~~(c) MANNER OF CONDUCTING REFERENDA.—~~

4 (1) ~~IN GENERAL.~~—Referenda conducted pursu-
5 ant to this section shall be conducted in a manner
6 determined by the Secretary.

7 (2) ~~ADVANCE REGISTRATION.~~—A manufacturer
8 who chooses to vote in any referendum conducted
9 under this section shall register with the Secretary
10 prior to the voting period, after receiving notice from
11 the Secretary concerning the referendum under
12 paragraph (4).

13 (3) ~~VOTING.~~—The Secretary shall establish pro-
14 cedures for voting in any referendum conducted
15 under this section. The ballots and other information
16 or reports that reveal or tend to reveal the identity
17 or vote of voters shall be strictly confidential.

18 (4) ~~NOTICE.~~—Not later than 30 days before a
19 referendum is conducted under this section with re-
20 spect to an order, the Secretary shall notify all man-
21 ufacturers, in such a manner as determined by the
22 Secretary, of the period during which voting in the
23 referendum will occur. The notice shall explain any
24 registration and voting procedures established under
25 this subsection.

1 (d) ~~SUBSEQUENT REFERENDA.~~—If an order is ap-
 2 proved in a referendum conducted under subsection (a),
 3 the Secretary shall conduct a subsequent referendum—

4 (1) at the request of the Board, subject to the
 5 voting requirements of subsections (b) and (c), to
 6 ascertain whether eligible manufacturers favor sus-
 7 pension, termination, or continuance of the order; or

8 (2) effective beginning on the date that is 5
 9 years after the date of the approval of the order, and
 10 at 5-year intervals thereafter, at the request of 25
 11 percent or more of the number of persons eligible to
 12 vote under subsection (b).

13 (e) ~~SUSPENSION OR TERMINATION.~~—If, as a result
 14 of a referendum conducted under subsection (d), the Sec-
 15 retary determines that suspension or termination of the
 16 order is favored by a simple majority of all votes cast in
 17 the referendum, the Secretary shall—

18 (1) not later than 180 days after the ref-
 19 erendum, suspend or terminate, as appropriate, col-
 20 lection of assessments under the order; and

21 (2) suspend or terminate, as appropriate, activi-
 22 ties under the order as soon as practicable and in
 23 an orderly manner.

24 (f) ~~COSTS OF REFERENDA.~~—The Board established
 25 under an order with respect to which a referendum is con-

1 ducted under this section shall reimburse the Secretary
 2 from assessments for any expenses incurred by the Sec-
 3 retary to conduct the referendum.

4 **SEC. 8. PETITION AND REVIEW.**

5 ~~(a) PETITION.—~~

6 ~~(1) IN GENERAL.—~~A person subject to an order
 7 issued under this Act may file with the Secretary a
 8 petition—

9 ~~(A) stating that the order, any provision of~~
 10 ~~the order, or any obligation imposed in connec-~~
 11 ~~tion with the order, is not established in accord-~~
 12 ~~ance with law; and~~

13 ~~(B) requesting a modification of the order~~
 14 ~~or an exemption from the order.~~

15 ~~(2) HEARING.—~~The Secretary shall give the pe-
 16 titioner an opportunity for a hearing on the petition;
 17 in accordance with regulations issued by the Sec-
 18 retary.

19 ~~(3) RULING.—~~After the hearing, the Secretary
 20 shall make a ruling on the petition. The ruling shall
 21 be final, subject to review as set forth in subsection

22 ~~(b).~~

23 ~~(4) LIMITATION ON PETITION.—~~Any petition
 24 filed under this subsection challenging an order, any
 25 provision of the order, or any obligation imposed in

1 connection with the order, shall be filed within 2
 2 years after the effective date of the order, provision,
 3 or obligation subject to challenge in the petition.

4 (b) REVIEW.—

5 (1) COMMENCEMENT OF ACTION.—The district
 6 courts of the United States in any district in which
 7 a person who is a petitioner under subsection (a) re-
 8 sides or conducts business shall have jurisdiction to
 9 review the ruling of the Secretary on the petition of
 10 the person, if a complaint requesting the review is
 11 filed no later than 20 days after the date of the
 12 entry of the ruling by the Secretary.

13 (2) PROCESS.—Service of process in pro-
 14 ceedings under this subsection shall be conducted in
 15 accordance with the Federal Rules of Civil Proce-
 16 dure.

17 (3) REMANDS.—If the court in a proceeding
 18 under this subsection determines that the ruling of
 19 the Secretary on the petition of the person is not in
 20 accordance with law, the court shall remand the
 21 matter to the Secretary with directions—

22 (A) to make such ruling as the court shall
 23 determine to be in accordance with law; or

24 (B) to take such further action as, in the
 25 opinion the court, the law requires.

1 (c) **ENFORCEMENT.**—The pendency of proceedings
 2 instituted under this section shall not impede, hinder, or
 3 delay the Attorney General or the Secretary from obtain-
 4 ing relief under section 9.

5 **SEC. 9. ENFORCEMENT.**

6 (a) **JURISDICTION.**—A district court of the United
 7 States shall have jurisdiction to enforce, and to prevent
 8 and restrain any person from violating, this Act or an
 9 order or regulation issued by the Secretary under this Act.

10 (b) **REFERRAL TO ATTORNEY GENERAL.**—A civil ac-
 11 tion authorized to be brought under this section shall be
 12 referred to the Attorney General of the United States for
 13 appropriate action.

14 (c) **CIVIL PENALTIES AND ORDERS.**—

15 (1) **CIVIL PENALTIES.**—A person who willfully
 16 violates an order or regulation issued by the Sec-
 17 retary under this Act may be assessed by the Sec-
 18 retary a civil penalty of not more than \$5,000 for
 19 each violation.

20 (2) **SEPARATE OFFENSE.**—Each violation and
 21 each day during which there is a failure to comply
 22 with an order or regulation issued by the Secretary
 23 shall be considered to be a separate offense.

24 (3) **CEASE-AND-DESIST ORDERS.**—In addition
 25 to, or in lieu of, a civil penalty, the Secretary may

1 issue an order requiring a person to cease and desist
2 from violating the order or regulation.

3 (4) NOTICE AND HEARING.—No order assessing
4 a penalty or cease-and-desist order may be issued by
5 the Secretary under this subsection unless the Sec-
6 retary provides notice and an opportunity for a hear-
7 ing on the record with respect to the violation.

8 (5) FINALITY.—An order assessing a penalty or
9 a cease-and-desist order issued under this subsection
10 by the Secretary shall be final and conclusive unless
11 the person against whom the order is issued files an
12 appeal from the order with the appropriate district
13 court of the United States, as provided in subsection
14 (d).

15 (d) ADDITIONAL REMEDIES.—The remedies provided
16 in this Act shall be in addition to, and not exclusive of,
17 other remedies that may be available.

18 **SEC. 10. INVESTIGATION AND POWER TO SUBPOENA.**

19 (a) INVESTIGATIONS.—The Secretary may conduct
20 such investigations as the Secretary considers necessary
21 for the effective administration of this Act, or to determine
22 whether any person has engaged or is engaging in any
23 act that constitutes a violation of this Act or any order
24 or regulation issued under this Act.

25 (b) SUBPOENAS, OATHS, AND AFFIRMATIONS.—

1 (1) INVESTIGATIONS.—For the purpose of con-
 2 ducting an investigation under subsection (a), the
 3 Secretary may administer oaths and affirmations,
 4 subpoena witnesses, compel the attendance of wit-
 5 nesses, take evidence, and require the production of
 6 any records that are relevant to the inquiry. The
 7 production of the records may be required from any
 8 place in the United States.

9 (2) ADMINISTRATIVE HEARINGS.—For the pur-
 10 pose of an administrative hearing held under section
 11 8(a)(2) or section 9(c)(4), the presiding officer may
 12 administer oaths and affirmations, subpoena wit-
 13 nesses, compel the attendance of witnesses, take evi-
 14 dence, and require the production of any records
 15 that are relevant to the inquiry. The attendance of
 16 witnesses and the production of the records may be
 17 required from any place in the United States.

18 (c) AID OF COURTS.—

19 (1) IN GENERAL.—In the case of contumacy by,
 20 or refusal to obey a subpoena issued under sub-
 21 section (b) to, any person, the Secretary may invoke
 22 the aid of any court of the United States within the
 23 jurisdiction of which the investigation or proceeding
 24 is conducted, or where the person resides or con-

1 ducts business; in order to enforce a subpoena issued
2 under subsection (b).

3 ~~(2) ORDER.—~~The court may issue an order re-
4 quiring the person referred to in a paragraph ~~(1)~~ to
5 comply with a subpoena referred to in paragraph
6 ~~(1)~~.

7 ~~(3) FAILURE TO OBEY.—~~Any failure to obey
8 the order of the court may be punished by the court
9 as a contempt of court.

10 ~~(4) PROCESS.—~~Process in any proceeding
11 under this subsection may be served in the United
12 States judicial district in which the person being
13 proceeded against resides or conducts business, or
14 wherever the person may be found.

15 **SEC. 11. SUSPENSION OR TERMINATION.**

16 ~~(a) MANDATORY SUSPENSION OR TERMINATION.—~~
17 The Secretary shall suspend or terminate an order or a
18 provision of an order if the Secretary finds that an order
19 or provision of an order obstructs or does not tend to ef-
20 fectuate the purpose of this Act, or if the Secretary deter-
21 mines that the order or a provision of an order is not fa-
22 vored by persons voting in a referendum conducted under
23 section 7.

24 ~~(b) IMPLEMENTATION OF SUSPENSION OR TERMI-~~
25 ~~NATION.—~~If, as a result of a referendum conducted under

1 section 7, the Secretary determines that the order is not
2 approved, the Secretary shall—

3 (1) not later than 180 days after making the
4 determination, suspend or terminate, as the case
5 may be, collection of assessments under the order;
6 and

7 (2) as soon as practicable, suspend or termi-
8 nate, as the case may be, activities under the order
9 in an orderly manner.

10 **SEC. 12. CONFIDENTIALITY.**

11 Nothing in this Act shall be construed to require the
12 Board to disclose information or records under section 552
13 of title 5, United States Code.

14 **SEC. 13. AMENDMENTS TO ORDERS.**

15 The provisions of this Act applicable to the order
16 shall be applicable to any amendment to the order, except
17 that section 8 shall not apply to an amendment.

18 **SEC. 14. EFFECT ON OTHER LAWS.**

19 This Act shall not affect or preempt any other Fed-
20 eral or State law authorizing research, education, and pro-
21 motion relating to concrete masonry products.

22 **SEC. 15. REGULATIONS.**

23 The Secretary may issue such regulations as may be
24 necessary to carry out this Act and the power vested in
25 the Secretary under this Act.

1 **SEC. 16. LIMITATION ON EXPENDITURES FOR ADMINISTRA-**
 2 **TIVE EXPENSES.**

3 Funds appropriated to carry out this Act may not
 4 be used for the payment of the expenses or expenditures
 5 of the Board in administering the order.

6 **SECTION 1. SHORT TITLE.**

7 *This Act may be cited as the “Concrete Masonry Prod-*
 8 *ucts Research, Education, and Promotion Act of 2013”.*

9 **SEC. 2. FINDINGS AND DECLARATION OF POLICY.**

10 (a) *FINDINGS.*—Congress finds the following:

11 (1) *The production of concrete masonry products*
 12 *plays a significant role in the economy of the United*
 13 *States.*

14 (2) *Concrete masonry products are produced by*
 15 *hundreds of concrete manufacturers and utilized*
 16 *throughout the United States and foreign countries.*

17 (3) *Concrete masonry products move in the*
 18 *channels of interstate and foreign commerce, and con-*
 19 *crete masonry products that do not move in such*
 20 *channels of commerce directly burden or affect inter-*
 21 *state commerce of concrete masonry products.*

22 (4) *The concrete masonry products industry em-*
 23 *ploys thousands of workers and positively impacts*
 24 *economic stability throughout the United States.*

25 (5) *The maintenance and expansion of existing*
 26 *markets for concrete masonry products and the devel-*

1 *opment of new markets is vital to the welfare of con-*
2 *crete manufacturers in the United States and those*
3 *concerned with marketing and using concrete ma-*
4 *sonry products as well as the general economic wel-*
5 *fare of the United States.*

6 (6) *The concrete masonry products industry*
7 *plays a vital role in providing safe, environmentally*
8 *sustainable, and economical construction for citizens*
9 *of the United States and abroad.*

10 (7) *Concrete masonry products are used for the*
11 *construction of structures that protect and provide*
12 *shelter for citizens during disasters (earthquakes,*
13 *floods, hurricanes, tornados, fire, et cetera).*

14 (8) *Concrete masonry structures provide energy*
15 *efficiencies to reduce American energy demands.*

16 (9) *Concrete masonry provides for durable struc-*
17 *tures that support sustainability objectives, reducing*
18 *long-term demands on natural resources.*

19 (10) *Concrete masonry products are made using*
20 *locally available resources throughout the United*
21 *States, reducing transportation and infrastructure de-*
22 *mands.*

23 (11) *Concrete masonry products are used to sup-*
24 *port the construction of durable and cost-efficient,*
25 *low-income housing.*

1 (b) *PURPOSE.*—*The purpose of this Act is to authorize*
 2 *the establishment of an orderly program for developing, fi-*
 3 *nancing, and carrying out an effective, continuous, and co-*
 4 *ordinated program of research, education, and promotion,*
 5 *including funds for marketing and market research activi-*
 6 *ties, that is designed to—*

7 (1) *strengthen the position of the concrete ma-*
 8 *sonry products industry in the domestic marketplace;*

9 (2) *maintain, develop, and expand markets and*
 10 *uses for concrete masonry products in the domestic*
 11 *and foreign marketplaces; and*

12 (3) *promote the use of concrete masonry products*
 13 *in environmentally sustainable construction and*
 14 *building.*

15 (c) *LIMITATION.*—*Nothing in this Act may be con-*
 16 *strued to provide for the control of production or otherwise*
 17 *limit the right of any person to manufacture concrete ma-*
 18 *sonry products.*

19 **SEC. 3. DEFINITIONS.**

20 *For the purposes of this Act:*

21 (a) *BLOCK MACHINE.*—*The term “block machine”*
 22 *means a piece of equipment that utilizes vibration and com-*
 23 *paction to form concrete masonry products.*

24 (b) *BOARD.*—*The term “Board” means the Concrete*
 25 *Masonry Products Board established under section 5.*

1 (c) *CAVITY*.—The term “cavity” means the open space
 2 in the mold of a block machine capable of forming a single
 3 concrete masonry unit having nominal plan dimensions of
 4 8 inches by 16 inches.

5 (d) *COMMERCE*.—The term “commerce” includes inter-
 6 state, foreign, and intrastate commerce.

7 (e) *CONCRETE MASONRY PRODUCTS*.—The term “con-
 8 crete masonry products” refers to a broader class of prod-
 9 ucts, including concrete masonry units as well as hardscape
 10 products such as concrete pavers and segmental retaining
 11 wall units, manufactured on a block machine using dry-
 12 cast concrete.

13 (f) *CONCRETE MASONRY UNIT*.—The term “concrete
 14 masonry unit” means a concrete masonry product that is
 15 a manmade masonry unit having an actual width of 3
 16 inches or greater and manufactured from dry-cast concrete
 17 using a block machine. Such term includes concrete block
 18 and related concrete units used in masonry applications.

19 (g) *DEPARTMENT*.—The term “Department” means
 20 the Department of Commerce.

21 (h) *DRY-CAST CONCRETE*.—The term “dry-cast con-
 22 crete” means a composite material that is composed essen-
 23 tially of aggregates embedded in a binding medium com-
 24 posed of a mixture of cementitious materials (including hy-
 25 draulic cement, pozzolans, or other cementitious materials)

1 *and water of such a consistency to maintain its shape after*
 2 *forming in a block machine.*

3 (i) *EDUCATION.*—*The term “education” means pro-*
 4 *grams that will educate or communicate the benefits of con-*
 5 *crete masonry products in safe and environmentally sus-*
 6 *tainable development, advancements in concrete masonry*
 7 *product technology and development, and other information*
 8 *and programs designed to generate increased demand for*
 9 *commercial, residential, multi-family, and institutional*
 10 *projects using concrete masonry products and to generally*
 11 *enhance the image of concrete masonry products.*

12 (j) *MACHINE CAVITIES.*—*The term “machine cavities”*
 13 *means the cavities with which a block machine could be*
 14 *equipped.*

15 (k) *MACHINE CAVITIES IN OPERATION.*—*The term*
 16 *“machine cavities in operation” means those machine cav-*
 17 *ities associated with a block machine that have produced*
 18 *concrete masonry units within the last 6 months of the date*
 19 *set for determining eligibility and is fully operable and ca-*
 20 *pable of producing concrete masonry units.*

21 (l) *MASONRY UNIT.*—*The term “masonry unit” means*
 22 *a noncombustible building product intended to be laid by*
 23 *hand or joined using mortar, grout, surface bonding, post-*
 24 *tensioning or some combination of these methods.*

1 (m) *MANUFACTURER.*—*The term “manufacturer”*
 2 *means any person engaged in the manufacturing of com-*
 3 *mercial concrete masonry products.*

4 (n) *ORDER.*—*The term “order” means an order issued*
 5 *under section 4.*

6 (o) *PERSON.*—*The term “person” means any indi-*
 7 *vidual, group of individuals, partnership, corporation, as-*
 8 *sociation, cooperative, or any other entity.*

9 (p) *PROMOTION.*—*The term “promotion” means any*
 10 *action, including paid advertising, to advance the image*
 11 *and desirability of concrete masonry products with the ex-*
 12 *press intent of improving the competitive position and*
 13 *stimulating sales of concrete masonry products in the mar-*
 14 *ketplace.*

15 (q) *RESEARCH.*—*The term “research” means studies*
 16 *testing the effectiveness of market development and pro-*
 17 *motion efforts, studies relating to the improvement of con-*
 18 *crete masonry products and new product development, and*
 19 *studies documenting the performance of concrete masonry.*

20 (r) *SECRETARY.*—*The term “Secretary” means the*
 21 *Secretary of Commerce.*

22 (s) *UNITED STATES.*—*The term “United States”*
 23 *means the several States and the District of Columbia.*

24 **SEC. 4. ISSUANCE OF ORDERS.**

25 (a) *IN GENERAL.*—

1 (1) *ISSUANCE.*—*The Secretary, subject to the*
 2 *procedures provided in subsection (b), shall issue or-*
 3 *ders under this Act applicable to manufacturers of*
 4 *concrete masonry products.*

5 (2) *SCOPE.*—*Any order shall be national in*
 6 *scope.*

7 (3) *ONE ORDER.*—*Not more than one order shall*
 8 *be in effect at any one time.*

9 (b) *PROCEDURES.*—

10 (1) *DEVELOPMENT OR RECEIPT OF PROPOSED*
 11 *ORDER.*—*A proposed order with respect to concrete*
 12 *masonry products may be—*

13 (A) *prepared by the Secretary at any time;*

14 *or*

15 (B) *requested by or submitted to the Sec-*
 16 *retary by—*

17 (i) *an existing national organization*
 18 *of concrete masonry product manufacturers;*

19 *or*

20 (ii) *any person that may be affected by*
 21 *the issuance of an order with respect to con-*
 22 *crete masonry products.*

23 (2) *PUBLICATION OF PROPOSED ORDER.*—*Not*
 24 *later than 60 days after receiving a proposed order or*
 25 *a request for a proposed order in accordance with*

1 subparagraph (B) of paragraph (1), the Secretary
 2 shall publish a proposed order in the Federal Register
 3 and give 30 days notice and opportunity for public
 4 comment on the proposed order.

5 (3) *ISSUANCE OF ORDER.*—

6 (A) *IN GENERAL.*—After notice and oppor-
 7 tunity for public comment are provided in ac-
 8 cordance with paragraph (2), the Secretary shall
 9 issue the order, taking into consideration the
 10 comments received and including in the order
 11 such provisions as are necessary to ensure that
 12 the order is in conformity with this Act.

13 (B) *EFFECTIVE DATE.*—The order shall be
 14 issued and become effective only after an affirm-
 15 ative vote in a referendum as provided in section
 16 7, but not later than 120 days after publication
 17 of the proposed order.

18 (c) *AMENDMENTS.*—The Secretary may, from time to
 19 time, amend an order. The provisions of this Act applicable
 20 to an order shall be applicable to any amendment to an
 21 order.

22 **SEC. 5. REQUIRED TERMS IN ORDERS.**

23 (a) *IN GENERAL.*—Any order issued under this Act
 24 shall contain the terms and provisions specified in this sec-
 25 tion.

1 **(b) CONCRETE MASONRY PRODUCTS BOARD.—**

2 **(1) ESTABLISHMENT AND MEMBERSHIP.—**

3 **(A) ESTABLISHMENT.—***The order shall pro-*
 4 *vide for the establishment of a Concrete Masonry*
 5 *Products Board to carry out a program of ge-*
 6 *neric promotion, research, and information re-*
 7 *garding concrete masonry products.*

8 **(B) MEMBERSHIP.—**

9 **(i) NUMBER OF MEMBERS.—***The board*
 10 *shall consist of not more than 25 members.*

11 **(ii) APPOINTMENT.—***The members of*
 12 *the Board shall be appointed by the Sec-*
 13 *retary from nominations submitted as pro-*
 14 *vided in this subsection.*

15 **(iii) COMPOSITION.—***The Board shall*
 16 *consist of manufacturers.*

17 **(2) DISTRIBUTION OF APPOINTMENTS.—**

18 **(A) GEOGRAPHICAL REPRESENTATION.—***To*
 19 *ensure fair and equitable representation of the*
 20 *concrete masonry products industry, the com-*
 21 *position of the Board shall reflect the geo-*
 22 *graphical distribution of the manufacture of con-*
 23 *crete masonry products in the United States and*
 24 *the types of concrete masonry products manufac-*
 25 *tured.*

1 (B) *ADJUSTMENT IN BOARD REPRESENTA-*
 2 *TION.—Three years after the assessment of con-*
 3 *crete masonry products commences pursuant to*
 4 *an order, and at the end of each 3-year period*
 5 *thereafter, the Board, subject to the review and*
 6 *approval of the Secretary, shall, if warranted,*
 7 *recommend to the Secretary the reapportionment*
 8 *of the Board membership to reflect changes in the*
 9 *geographical distribution of the manufacture of*
 10 *concrete masonry products and the types of con-*
 11 *crete masonry products manufactured.*

12 (3) *NOMINATIONS PROCESS.—The order shall*
 13 *provide the following:*

14 (A) *NUMBER OF NOMINATIONS.—Two nomi-*
 15 *nees shall be submitted for each appointment to*
 16 *the Board.*

17 (B) *PROCEDURE.—Nominations for each*
 18 *appointment of a manufacturer shall be made by*
 19 *manufacturers in accordance with procedures*
 20 *specified in the order.*

21 (C) *FAILURE TO NOMINATE.—In any case*
 22 *in which manufacturers fail to nominate indi-*
 23 *viduals for an appointment to the Board, the*
 24 *Secretary may appoint an individual to fill the*

1 *vacancy on a basis provided in the order or*
 2 *other regulations of the Secretary.*

3 (D) *FAILURE TO APPOINT.*—*If the Secretary*
 4 *fails to make an appointment to the Board with-*
 5 *in 30 days of receiving nominations for such ap-*
 6 *pointment, the first nominee for such appoint-*
 7 *ment shall be deemed appointed.*

8 (4) *ALTERNATES.*—*The order shall provide for*
 9 *the selection of alternate members of the Board by the*
 10 *Secretary in accordance with procedures specified in*
 11 *the order.*

12 (5) *TERMS.*—

13 (A) *IN GENERAL.*—*The members and any*
 14 *alternates of the Board shall each serve for a*
 15 *term of 3 years, except that members and any al-*
 16 *ternates initially appointed to the Board shall*
 17 *serve for terms of not more than 2, 3, and 4*
 18 *years, as specified by the order.*

19 (B) *LIMITATION ON CONSECUTIVE TERMS.*—
 20 *A member or alternate may serve not more than*
 21 *2 consecutive terms.*

22 (C) *CONTINUATION OF TERM.*—*Notwith-*
 23 *standing subparagraph (B), each member or al-*
 24 *ternate shall continue to serve until a successor*
 25 *is appointed by the Secretary.*

1 (D) *VACANCIES.*—*A vacancy arising before*
 2 *the expiration of a term of office of an incum-*
 3 *bent member or alternate of the Board shall be*
 4 *filled in a manner provided for in the order.*

5 (6) *DISQUALIFICATION FROM BOARD SERVICE.*—
 6 *The order shall provide that if a member or alternate*
 7 *of the Board who was appointed as a manufacturer*
 8 *ceases to qualify as a manufacturer, such member or*
 9 *alternate shall be disqualified from serving on the*
 10 *Board.*

11 (7) *COMPENSATION.*—

12 (A) *IN GENERAL.*—*Members and any alter-*
 13 *nates of the Board shall serve without compensa-*
 14 *tion.*

15 (B) *TRAVEL EXPENSES.*—*If approved by the*
 16 *Board, members or alternates shall be reimbursed*
 17 *for reasonable travel expenses, which may in-*
 18 *clude per diem allowance or actual subsistence*
 19 *incurred while away from their homes or regular*
 20 *places of business in the performance of services*
 21 *for the Board.*

22 (c) *POWERS AND DUTIES OF THE BOARD.*—*The order*
 23 *shall specify the powers and duties of the Board, which shall*
 24 *include the power and duty—*

1 (1) *to administer the order in accordance with*
2 *its terms and conditions and to collect assessments;*

3 (2) *to develop and recommend to the Secretary*
4 *for approval such bylaws as may be necessary for the*
5 *functioning of the board and such rules as may be*
6 *necessary to administer the order, including activities*
7 *authorized to be carried out under the order;*

8 (3) *to meet, organize, and select from among*
9 *members of the Board a chairperson, other officers,*
10 *and committees and subcommittees, as the Board de-*
11 *termines appropriate;*

12 (4) *to establish regional organizations or com-*
13 *mittees to administer regional initiatives;*

14 (5) *to establish working committees of persons*
15 *other than Board members;*

16 (6) *to employ such persons, other than the mem-*
17 *bers, as the board considers necessary, and to deter-*
18 *mine the compensation and specify the duties of the*
19 *persons;*

20 (7) *to prepare and submit for the approval of the*
21 *Secretary, before the beginning of each fiscal year,*
22 *rates of assessment under section 6 and an annual*
23 *budget of the anticipated expenses to be incurred in*
24 *the administration of the order, including the prob-*
25 *able cost of each promotion, research, and information*

1 *activity proposed to be developed or carried out by the*
2 *Board;*

3 *(8) to borrow funds necessary for the startup ex-*
4 *penses of the order;*

5 *(9) to carry out research, education, and pro-*
6 *motion programs and projects, and to pay the costs*
7 *of such programs and projects with assessments col-*
8 *lected under section 6;*

9 *(10) subject to subsection (e), to enter into con-*
10 *tracts or agreements to develop and carry out pro-*
11 *grams or projects of research, education, and pro-*
12 *motion relating to concrete masonry products;*

13 *(11) to keep minutes, books, and records that re-*
14 *flect the actions and transactions of the Board, and*
15 *promptly report minutes of each Board meeting to the*
16 *Secretary;*

17 *(12) to receive, investigate, and report to the Sec-*
18 *retary complaints of violations of the order;*

19 *(13) to furnish the Secretary with such informa-*
20 *tion as the Secretary may request;*

21 *(14) to recommend to the Secretary such amend-*
22 *ments to the order as the Board considers appro-*
23 *priate; and*

24 *(15) to provide the Secretary with advance no-*
25 *tice of meetings.*

1 (d) *PROGRAMS AND PROJECTS; BUDGETS; EX-*
 2 *PENSES.—*

3 (1) *PROGRAMS AND PROJECTS.—The order shall*
 4 *require the Board to submit to the Secretary for ap-*
 5 *proval any program or project of research, education,*
 6 *or promotion.*

7 (2) *BUDGETS.—*

8 (A) *SUBMISSION.—The order shall require*
 9 *the Board to submit to the Secretary for ap-*
 10 *proval a budget of the anticipated expenses and*
 11 *disbursements of the Board in the implementa-*
 12 *tion of the order, including the projected costs of*
 13 *concrete masonry products research, education,*
 14 *and promotion programs and projects.*

15 (B) *TIMING.—The budget shall be submitted*
 16 *before the beginning of a fiscal year and as fre-*
 17 *quently as may be necessary after the beginning*
 18 *of the fiscal year.*

19 (C) *APPROVAL.—If the Secretary fails to*
 20 *approve or reject a budget within 30 days of re-*
 21 *ceipt, such budget shall be deemed approved.*

22 (3) *ADMINISTRATIVE EXPENSES.—*

23 (A) *INCURRING EXPENSES.—A board may*
 24 *incur the expenses described in paragraph (2)*
 25 *and other expenses for the administration, main-*

1 *tenance, and functioning of the Board as author-*
2 *ized by the Secretary.*

3 *(B) PAYMENT OF EXPENSES.—Expenses in-*
4 *curring under subparagraph (A) shall be paid by*
5 *the Board using assessments collected under sec-*
6 *tion 6, earnings obtained from assessments, and*
7 *other income of the Board. Any funds borrowed*
8 *by the Board shall be expended only for startup*
9 *costs and capital outlays.*

10 *(C) LIMITATION ON SPENDING.—For fiscal*
11 *years beginning 3 or more years after the date*
12 *of the establishment of the Board, the Board may*
13 *not expend for administration (except for reim-*
14 *bursement to the Secretary required under sub-*
15 *paragraph (D)), maintenance, and functioning*
16 *of the Board in a fiscal year an amount that ex-*
17 *ceeds 10 percent of the assessment and other in-*
18 *come received by the Board for the fiscal year.*

19 *(D) REIMBURSEMENT OF SECRETARY.—The*
20 *order shall require that the Secretary be reim-*
21 *bursed from assessments for all expenses incurred*
22 *by the Secretary in the implementation, admin-*
23 *istration, and supervision of the order, including*
24 *all referenda costs incurred in connection with*
25 *the order.*

1 (e) *CONTRACTS AND AGREEMENTS.*—

2 (1) *IN GENERAL.*—*The order shall provide that,*
 3 *with the approval of the Secretary, the Board may—*

4 (A) *enter into contracts and agreements to*
 5 *carry programs and projects of research, edu-*
 6 *cation, and promotion activities relating to con-*
 7 *crete masonry products, including contracts and*
 8 *agreements with manufacturer associations or*
 9 *other entities as considered appropriate by the*
 10 *Secretary;*

11 (B) *enter into contracts and agreements for*
 12 *administrative services; and*

13 (C) *pay the cost of approved research, edu-*
 14 *cation, and promotion programs and projects*
 15 *using assessments collected under section 6, earn-*
 16 *ings obtained from assessments, and other in-*
 17 *come of the Board.*

18 (2) *REQUIREMENTS.*—*Each contract or agree-*
 19 *ment shall provide that any person who enters into*
 20 *the contract or agreement with the Board shall—*

21 (A) *develop and submit to the Board a pro-*
 22 *posed activity together with a budget that speci-*
 23 *fies the cost to be incurred to carry out the activ-*
 24 *ity;*

1 (B) keep accurate records of all of trans-
2 actions relating to the contract or agreement;

3 (C) account for funds received and expended
4 in connection with the contract or agreement;

5 (D) make periodic reports to the Board of
6 activities conducted under the contract or agree-
7 ment; and

8 (E) make such other reports as the Board or
9 the Secretary considers relevant.

10 (3) *FAILURE TO APPROVE.*—If the Secretary fails
11 to approve or reject a contract or agreement entered
12 into under paragraph (1) within 30 days of receipt,
13 the contract or agreement shall be deemed approved.

14 (f) *BOOKS AND RECORDS OF BOARD.*—

15 (1) *IN GENERAL.*—The order shall require the
16 Board to—

17 (A) maintain such books and records (which
18 shall be available to the Secretary for inspection
19 and audit) as the Secretary may require;

20 (B) collect and submit to the Secretary, at
21 any time the Secretary may specify, any infor-
22 mation the Secretary may request; and

23 (C) account for the receipt and disburse-
24 ment of all funds in the possession, or under the
25 control, of the Board.

1 (2) *AUDITS.*—*The order shall require the Board*
 2 *to have—*

3 (A) *the books and records of the Board au-*
 4 *dited by an independent auditor at the end of*
 5 *each fiscal year; and*

6 (B) *a report of the audit submitted directly*
 7 *to the Secretary.*

8 (g) *PROHIBITED ACTIVITIES.*—

9 (1) *IN GENERAL.*—*Subject to paragraph (2), the*
 10 *Board shall not engage in any action to, nor shall*
 11 *any funds received by the Board under this Act be*
 12 *used to—*

13 (A) *influence legislation or governmental*
 14 *action;*

15 (B) *engage in an action that would be a*
 16 *conflict of interest; or*

17 (C) *engage in advertising that is false or*
 18 *misleading.*

19 (2) *EXCEPTIONS.*—*Paragraph (1) does not pre-*
 20 *clude—*

21 (A) *the development and recommendation of*
 22 *amendments to the order;*

23 (B) *the communication to appropriate gov-*
 24 *ernment officials of information relating to the*
 25 *conduct, implementation, or results of research,*

1 *education, and promotion activities under the*
 2 *order; or*

3 *(C) any action designed to market concrete*
 4 *masonry products directly to a foreign govern-*
 5 *ment or political subdivision of a foreign govern-*
 6 *ment.*

7 *(h) PERIODIC EVALUATION.—The order shall require*
 8 *the Board to provide for the independent evaluation of all*
 9 *research, education, and promotion activities undertaken*
 10 *under the order.*

11 *(i) BOOKS AND RECORDS OF PERSONS COVERED BY*
 12 *ORDER.—*

13 *(1) IN GENERAL.—The order shall require that*
 14 *manufacturers of concrete masonry products shall—*

15 *(A) maintain records sufficient to ensure*
 16 *compliance with the order and regulations;*

17 *(B) submit to the Board any information*
 18 *required by the Board to carry out its respon-*
 19 *sibilities; and*

20 *(C) make the records described in subpara-*
 21 *graph (A) available, during normal business*
 22 *hours, for inspection by employees or agents of*
 23 *the Board or the Department, including any*
 24 *records necessary to verify information required*
 25 *under subparagraph (B).*

1 (2) *TIME REQUIREMENT.*—Any record required
 2 to be maintained under paragraph (1) shall be main-
 3 tained for such time period as the Secretary may pre-
 4 scribe.

5 (3) *CONFIDENTIALITY OF INFORMATION.*—

6 (A) *IN GENERAL.*—Except as otherwise pro-
 7 vided in this Act, all information obtained under
 8 paragraph (1) or as part of a referendum under
 9 section 7 shall be kept confidential by all officers,
 10 employees, and agents of the Department and of
 11 the Board.

12 (B) *SUITS AND HEARINGS.*—Information
 13 referred to in subparagraph (A) may be disclosed
 14 only if—

15 (i) the Secretary considers the informa-
 16 tion relevant; and

17 (ii) the information is revealed in a ju-
 18 dicial proceeding or administrative hearing
 19 brought at the direction or on the request of
 20 the Secretary or to which the Secretary or
 21 any officer of the Department is a party.

22 (C) *GENERAL STATEMENTS AND PUBLICA-*
 23 *TIONS.*—This paragraph does not prohibit—

24 (i) the issuance of general statements
 25 based on reports or on information relating

1 to a number of persons subject to an order
 2 if the statements do not identify the infor-
 3 mation furnished by any person; or

4 (ii) the publication, by direction of the
 5 Secretary, of the name of any person vio-
 6 lating any order and a statement of the
 7 particular provisions of the order violated
 8 by the person.

9 (D) *PENALTY.*—Any person who willfully
 10 violates this subsection shall be fined not more
 11 than \$5,000, imprisoned not more than 1 year,
 12 or both.

13 (4) *WITHHOLDING INFORMATION.*—This sub-
 14 section does not authorize the withholding of informa-
 15 tion from Congress.

16 **SEC. 6. ASSESSMENTS.**

17 (a) *ASSESSMENTS.*—The order shall provide that as-
 18 sessments shall be paid by manufacturers with respect to
 19 concrete masonry products manufactured and marketed in
 20 the United States.

21 (b) *COLLECTION.*—

22 (1) *IN GENERAL.*—Assessments required under
 23 the order shall be remitted by the manufacturer to the
 24 Board in the manner prescribed by the order.

1 (2) *TIMING.*—*The order shall provide that assess-*
 2 *ments required under the order shall be remitted to*
 3 *the Board not less frequently than quarterly.*

4 (3) *RECORDS.*—*As part of the remittance of as-*
 5 *sessments, manufacturers shall identify the total*
 6 *amount due in assessments on all sales receipts, in-*
 7 *voices or other commercial documents of sale as a re-*
 8 *sult of the sale of concrete masonry units in a manner*
 9 *as prescribed by the Board to ensure compliance with*
 10 *the order.*

11 (c) *ASSESSMENT RATES.*—*With respect to assessment*
 12 *rates, the order shall contain the following terms:*

13 (1) *INITIAL RATE.*—*The assessment rate on con-*
 14 *crete masonry products shall be \$0.01 per concrete*
 15 *masonry unit sold.*

16 (2) *CHANGES IN THE RATE.*—

17 (A) *AUTHORITY TO CHANGE RATE.*—*The*
 18 *Board shall have the authority to change the as-*
 19 *essment rate. A two-thirds majority of voting*
 20 *members of the Board shall be required to ap-*
 21 *prove a change in the assessment rate.*

22 (B) *LIMITATION ON INCREASES.*—*An in-*
 23 *crease or decrease in the assessment rate with re-*
 24 *spect to concrete masonry products may not ex-*
 25 *ceed \$0.01 per concrete masonry unit sold.*

1 (C) *MAXIMUM RATE.*—*The assessment rate*
 2 *shall not be in excess of \$0.05 per concrete ma-*
 3 *sonry unit.*

4 (D) *LIMITATION ON FREQUENCY OF*
 5 *CHANGES.*—*The assessment rate may not be in-*
 6 *creased or decreased more than once annually.*

7 (d) *LATE-PAYMENT AND INTEREST CHARGES.*—

8 (1) *IN GENERAL.*—*Late-payment and interest*
 9 *charges may be levied on each person subject to the*
 10 *order who fails to remit an assessment in accordance*
 11 *with subsection (b).*

12 (2) *RATE.*—*The rate for late-payment and inter-*
 13 *est charges shall be specified by the Secretary.*

14 (e) *INVESTMENT OF ASSESSMENTS.*—*Pending dis-*
 15 *bursement of assessments under a budget approved by the*
 16 *Secretary, a board may invest assessments collected under*
 17 *this section in—*

18 (1) *obligations of the United States or any agen-*
 19 *cy of the United States;*

20 (2) *general obligations of any State or any polit-*
 21 *ical subdivision of a State;*

22 (3) *interest-bearing accounts or certificates of de-*
 23 *posit of financial institutions that are members of the*
 24 *Federal Reserve System; or*

1 (4) *obligations fully guaranteed as to principal*
 2 *and interest by the United States.*

3 (f) *ASSESSMENT FUNDS FOR REGIONAL INITIA-*
 4 *TIVES.—*

5 (1) *IN GENERAL.—The order shall provide that*
 6 *no less than 50 percent of the assessments (less ad-*
 7 *ministration expenses) paid by a manufacturer shall*
 8 *be used to support research, education, and promotion*
 9 *plans and projects in support of the geographic region*
 10 *of the manufacturer.*

11 (2) *GEOGRAPHIC REGIONS.—The order shall pro-*
 12 *vide for the following geographic regions:*

13 (A) *Region I shall comprise Connecticut,*
 14 *Delaware, Maine, Maryland, Massachusetts, New*
 15 *Hampshire, New Jersey, New York, Pennsyl-*
 16 *vania, Rhode Island, Vermont, and West Vir-*
 17 *ginia.*

18 (B) *Region II shall comprise Alabama,*
 19 *Florida, Georgia, Mississippi, North Carolina,*
 20 *South Carolina, Tennessee, and Virginia.*

21 (C) *Region III shall comprise Illinois, Indi-*
 22 *ana, Iowa, Kentucky, Michigan, Minnesota, Ne-*
 23 *braska, North Dakota, Ohio, South Dakota, and*
 24 *Wisconsin.*

1 (D) *Region IV shall comprise Arizona, Ar-*
 2 *kansas, Kansas, Louisiana, Missouri, New Mex-*
 3 *ico, Oklahoma, and Texas.*

4 (E) *Region V shall comprise Alaska, Cali-*
 5 *fornia, Colorado, Hawaii, Idaho, Montana, Ne-*
 6 *vada, Oregon, Utah, Washington, and Wyoming.*

7 (3) *ADJUSTMENT OF GEOGRAPHIC REGIONS.—*
 8 *The order shall provide that the Secretary may, upon*
 9 *recommendation of the Board, modify the composition*
 10 *of the geographic regions described in paragraph (2).*

11 **SEC. 7. REFERENDA.**

12 (a) *INITIAL REFERENDUM.—*

13 (1) *REFERENDUM REQUIRED.—During the 60-*
 14 *day period immediately preceding the proposed effec-*
 15 *tive date of the order issued under section 4, the Sec-*
 16 *retary shall conduct a referendum among manufac-*
 17 *turers required to pay assessments under the order, as*
 18 *provided in section 6.*

19 (2) *APPROVAL OF ORDER NEEDED.—The order*
 20 *shall become effective only if the Secretary determines*
 21 *that the order has been approved by a simple major-*
 22 *ity of all votes cast in the referendum.*

23 (b) *VOTES PERMITTED.—*

24 (1) *IN GENERAL.—Each manufacturer eligible to*
 25 *vote in a referendum conducted under this section*

1 *shall be entitled to cast one vote for each machine cav-*
 2 *ity in operation that is operated by such manufac-*
 3 *turer if they satisfy the eligibility requirements as de-*
 4 *finied in paragraph (2).*

5 (2) *ELIGIBILITY.—For purposes of paragraph*
 6 *(1), manufacturers shall be considered to be eligible to*
 7 *vote if they have manufactured concrete masonry*
 8 *products during a period of at least 180 days prior*
 9 *to the referendum.*

10 (c) *MANNER OF CONDUCTING REFERENDA.—*

11 (1) *IN GENERAL.—Referenda conducted pursuant*
 12 *to this section shall be conducted in a manner deter-*
 13 *mined by the Secretary.*

14 (2) *ADVANCE REGISTRATION.—A manufacturer*
 15 *who chooses to vote in any referendum conducted*
 16 *under this section shall register with the Secretary*
 17 *prior to the voting period, after receiving notice from*
 18 *the Secretary concerning the referendum under para-*
 19 *graph (4).*

20 (3) *VOTING.—The Secretary shall establish pro-*
 21 *cedures for voting in any referendum conducted under*
 22 *this section. The ballots and other information or re-*
 23 *ports that reveal or tend to reveal the identity or vote*
 24 *of voters shall be strictly confidential.*

1 (4) *NOTICE.*—Not later than 30 days before a
2 *referendum is conducted under this section with re-*
3 *spect to an order, the Secretary shall notify all manu-*
4 *facturers, in such a manner as determined by the Sec-*
5 *retary, of the period during which voting in the ref-*
6 *erendum will occur. The notice shall explain any reg-*
7 *istration and voting procedures established under this*
8 *subsection.*

9 (d) *SUBSEQUENT REFERENDA.*—If an order is ap-
10 *proved in a referendum conducted under subsection (a), the*
11 *Secretary shall conduct a subsequent referendum—*

12 (1) *at the request of the Board, subject to the vot-*
13 *ing requirements of subsections (b) and (c), to ascer-*
14 *tain whether eligible manufacturers favor suspension,*
15 *termination, or continuance of the order; or*

16 (2) *effective beginning on the date that is 5 years*
17 *after the date of the approval of the order, and at 5-*
18 *year intervals thereafter, at the request of 25 percent*
19 *or more of the number of persons eligible to vote*
20 *under subsection (b).*

21 (e) *SUSPENSION OR TERMINATION.*—If, as a result of
22 *a referendum conducted under subsection (d), the Secretary*
23 *determines that suspension or termination of the order is*
24 *avored by a simple majority of all votes cast in the ref-*
25 *erendum, the Secretary shall—*

1 (1) *not later than 180 days after the referendum,*
 2 *suspend or terminate, as appropriate, collection of as-*
 3 *sessments under the order; and*

4 (2) *suspend or terminate, as appropriate, activi-*
 5 *ties under the order as soon as practicable and in an*
 6 *orderly manner.*

7 (f) *COSTS OF REFERENDA.*—*The Board established*
 8 *under an order with respect to which a referendum is con-*
 9 *ducted under this section shall reimburse the Secretary from*
 10 *assessments for any expenses incurred by the Secretary to*
 11 *conduct the referendum.*

12 **SEC. 8. PETITION AND REVIEW.**

13 (a) *PETITION.*—

14 (1) *IN GENERAL.*—*A person subject to an order*
 15 *issued under this Act may file with the Secretary a*
 16 *petition—*

17 (A) *stating that the order, any provision of*
 18 *the order, or any obligation imposed in connec-*
 19 *tion with the order, is not established in accord-*
 20 *ance with law; and*

21 (B) *requesting a modification of the order*
 22 *or an exemption from the order.*

23 (2) *HEARING.*—*The Secretary shall give the peti-*
 24 *tioner an opportunity for a hearing on the petition,*

1 *in accordance with regulations issued by the Sec-*
2 *retary.*

3 (3) *RULING.*—*After the hearing, the Secretary*
4 *shall make a ruling on the petition. The ruling shall*
5 *be final, subject to review as set forth in subsection*
6 *(b).*

7 (4) *LIMITATION ON PETITION.*—*Any petition*
8 *filed under this subsection challenging an order, any*
9 *provision of the order, or any obligation imposed in*
10 *connection with the order, shall be filed within 2*
11 *years after the effective date of the order, provision,*
12 *or obligation subject to challenge in the petition.*

13 (b) *REVIEW.*—

14 (1) *COMMENCEMENT OF ACTION.*—*The district*
15 *courts of the United States in any district in which*
16 *a person who is a petitioner under subsection (a) re-*
17 *sides or conducts business shall have jurisdiction to*
18 *review the ruling of the Secretary on the petition of*
19 *the person, if a complaint requesting the review is*
20 *filed no later than 20 days after the date of the entry*
21 *of the ruling by the Secretary.*

22 (2) *PROCESS.*—*Service of process in proceedings*
23 *under this subsection shall be conducted in accordance*
24 *with the Federal Rules of Civil Procedure.*

1 (3) *REMANDS.*—If the court in a proceeding
 2 under this subsection determines that the ruling of the
 3 Secretary on the petition of the person is not in ac-
 4 cordance with law, the court shall remand the matter
 5 to the Secretary with directions—

6 (A) to make such ruling as the court shall
 7 determine to be in accordance with law; or

8 (B) to take such further action as, in the
 9 opinion the court, the law requires.

10 (c) *ENFORCEMENT.*—The pendency of proceedings in-
 11 stituted under this section shall not impede, hinder, or
 12 delay the Attorney General or the Secretary from obtaining
 13 relief under section 9.

14 **SEC. 9. ENFORCEMENT.**

15 (a) *JURISDICTION.*—A district court of the United
 16 States shall have jurisdiction to enforce, and to prevent and
 17 restrain any person from violating, this Act or an order
 18 or regulation issued by the Secretary under this Act.

19 (b) *REFERRAL TO ATTORNEY GENERAL.*—A civil ac-
 20 tion authorized to be brought under this section shall be
 21 referred to the Attorney General of the United States for
 22 appropriate action.

23 (c) *CIVIL PENALTIES AND ORDERS.*—

24 (1) *CIVIL PENALTIES.*—A person who willfully
 25 violates an order or regulation issued by the Secretary

1 *under this Act may be assessed by the Secretary a*
2 *civil penalty of not more than \$5,000 for each viola-*
3 *tion.*

4 (2) *SEPARATE OFFENSE.—Each violation and*
5 *each day during which there is a failure to comply*
6 *with an order or regulation issued by the Secretary*
7 *shall be considered to be a separate offense.*

8 (3) *CEASE-AND-DESIST ORDERS.—In addition*
9 *to, or in lieu of, a civil penalty, the Secretary may*
10 *issue an order requiring a person to cease and desist*
11 *from violating the order or regulation.*

12 (4) *NOTICE AND HEARING.—No order assessing a*
13 *penalty or cease-and-desist order may be issued by the*
14 *Secretary under this subsection unless the Secretary*
15 *provides notice and an opportunity for a hearing on*
16 *the record with respect to the violation.*

17 (5) *FINALITY.—An order assessing a penalty or*
18 *a cease-and-desist order issued under this subsection*
19 *by the Secretary shall be final and conclusive unless*
20 *the person against whom the order is issued files an*
21 *appeal from the order with the appropriate district*
22 *court of the United States, as provided in subsection*
23 *(d).*

1 (d) *ADDITIONAL REMEDIES.*—*The remedies provided*
 2 *in this Act shall be in addition to, and not exclusive of,*
 3 *other remedies that may be available.*

4 **SEC. 10. INVESTIGATION AND POWER TO SUBPOENA.**

5 (a) *INVESTIGATIONS.*—*The Secretary may conduct*
 6 *such investigations as the Secretary considers necessary for*
 7 *the effective administration of this Act, or to determine*
 8 *whether any person has engaged or is engaging in any act*
 9 *that constitutes a violation of this Act or any order or regu-*
 10 *lation issued under this Act.*

11 (b) *SUBPOENAS, OATHS, AND AFFIRMATIONS.*—

12 (1) *INVESTIGATIONS.*—*For the purpose of con-*
 13 *ducting an investigation under subsection (a), the*
 14 *Secretary may administer oaths and affirmations,*
 15 *subpoena witnesses, compel the attendance of wit-*
 16 *nesses, take evidence, and require the production of*
 17 *any records that are relevant to the inquiry. The pro-*
 18 *duction of the records may be required from any place*
 19 *in the United States.*

20 (2) *ADMINISTRATIVE HEARINGS.*—*For the pur-*
 21 *pose of an administrative hearing held under section*
 22 *8(a)(2) or section 9(c)(4), the presiding officer may*
 23 *administer oaths and affirmations, subpoena wit-*
 24 *nesses, compel the attendance of witnesses, take evi-*
 25 *dence, and require the production of any records that*

1 are relevant to the inquiry. The attendance of wit-
2 nesses and the production of the records may be re-
3 quired from any place in the United States.

4 (c) AID OF COURTS.—

5 (1) IN GENERAL.—In the case of contumacy by,
6 or refusal to obey a subpoena issued under subsection
7 (b) to, any person, the Secretary may invoke the aid
8 of any court of the United States within the jurisdic-
9 tion of which the investigation or proceeding is con-
10 ducted, or where the person resides or conducts busi-
11 ness, in order to enforce a subpoena issued under sub-
12 section (b).

13 (2) ORDER.—The court may issue an order re-
14 quiring the person referred to in a paragraph (1) to
15 comply with a subpoena referred to in paragraph (1).

16 (3) FAILURE TO OBEY.—Any failure to obey the
17 order of the court may be punished by the court as
18 a contempt of court.

19 (4) PROCESS.—Process in any proceeding under
20 this subsection may be served in the United States ju-
21 dicial district in which the person being proceeded
22 against resides or conducts business, or wherever the
23 person may be found.

1 **SEC. 11. SUSPENSION OR TERMINATION.**

2 (a) *MANDATORY SUSPENSION OR TERMINATION.*—The
 3 Secretary shall suspend or terminate an order or a provi-
 4 sion of an order if the Secretary finds that an order or pro-
 5 vision of an order obstructs or does not tend to effectuate
 6 the purpose of this Act, or if the Secretary determines that
 7 the order or a provision of an order is not favored by per-
 8 sons voting in a referendum conducted under section 7.

9 (b) *IMPLEMENTATION OF SUSPENSION OR TERMI-*
 10 *NATION.*—If, as a result of a referendum conducted under
 11 section 7, the Secretary determines that the order is not ap-
 12 proved, the Secretary shall—

13 (1) *not later than 180 days after making the de-*
 14 *termination, suspend or terminate, as the case may*
 15 *be, collection of assessments under the order; and*

16 (2) *as soon as practicable, suspend or terminate,*
 17 *as the case may be, activities under the order in an*
 18 *orderly manner.*

19 **SEC. 12. CONFIDENTIALITY.**

20 *Nothing in this Act shall be construed to require the*
 21 *Board to disclose information or records under section 552*
 22 *of title 5, United States Code.*

23 **SEC. 13. AMENDMENTS TO ORDERS.**

24 *The provisions of this Act applicable to the order shall*
 25 *be applicable to any amendment to the order, except that*
 26 *section 8 shall not apply to an amendment.*

1 **SEC. 14. EFFECT ON OTHER LAWS.**

2 *This Act shall not affect or preempt any other Federal*
3 *or State law authorizing research, education, and pro-*
4 *motion relating to concrete masonry products.*

5 **SEC. 15. REGULATIONS.**

6 *The Secretary may issue such regulations as may be*
7 *necessary to carry out this Act and the power vested in the*
8 *Secretary under this Act.*

9 **SEC. 16. LIMITATION ON EXPENDITURES FOR ADMINISTRA-**
10 **TIVE EXPENSES.**

11 *Funds appropriated to carry out this Act may not be*
12 *used for the payment of the expenses or expenditures of the*
13 *Board in administering the order.*

Calendar No. 617

113TH CONGRESS
2D Session

S. 429

A BILL

To enable concrete masonry products manufacturers to establish, finance, and carry out a coordinated program of research, education, and promotion to improve, maintain, and develop markets for concrete masonry products.

DECEMBER 8, 2014

Reported with an amendment